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In re Application of ENDOU et al.	:	DECISION ON
Application No.: 10/579,173	:	
PCT No.: PCT/JP04/16761	:	RESPONSE TO
Int. Filing: 11 November 2004	:	
Priority Date: 14 November 2003	:	NOTIFICATION OF
Attorney Docket No.: 65445	:	
For: REMEDY/PREVENTIVE FOR	:	DEFECTIVE RESPONSE
VASCULAR DISORDERS AND	:	
HYPERTENSION AND METHOD OF	:	
SCREENING THE SAME	:	

This decision is in response to applicant's "Letter Accompanying Substitute Declaration" filed in response to the 01 August 2008 Notification of Defective Response on 04 September and 16 October 2007 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 08 January 2007, a Notification of Missing Requirements was mailed to applicant indicating that, *inter alia*, an oath or declaration, in compliance with 37 CFR 1.497(a) and (b), and the surcharge for filing the oath or declaration after the thirty month period was required.

On 07 March 2007, a Response to the Notification of Missing Requirements (Form PCT/DO/EO/905) was filed in the USPTO accompanied by three executed declarations. Each declaration identified only some of the four inventors listed on the published international application and was not in compliance with 37 CFR 1.497. The declaration set forth a two month time period within which to respond, with extensions of time available under 37 CFR 1.136(a).

On 01 August 2007, a Notification of Defective Response was mailed indicating that "all inventors must be identified on each oath and/or declaration". The notification provided applicant with one month within which to respond or the time remaining under the 905 (or by 07 October 2007).

On 04 September 2007, applicant submitted a multi-page declaration. The declaration

was comprised of Pages 1-3 and 3 Page 4s; each page executed by different inventors.

On 16 October 2007, in an attempt to rectify the declaration, applicant submitted a copy of the declaration, again containing multiple page 4s of the declaration. The Application Data Sheet was also submitted.

On 05 November 2008, a Notification of Defective Response was mailed indicating that applicant "must submit a complete declaration when inventors sign separate signature pages", noting that applicant had filed duplicate copies of page 4 of the declaration.

DISCUSSION

The 05 November 2008 Notification of Defective Response was erroneously issued, as such Notification had previously been issued on 01 August 2007 and set forth a one month period of time within which to respond or the time remaining in the Notification of Missing Requirements (or by 07 October 2007). Therefore, the 05 November 2008 Notification of Defective Response is hereby **VACATED**.

The declaration submitted on 04 September 2007 is identical to the declaration submitted on 16 October 2007. The declaration is a four page declaration; however, the declaration is comprised of 6 pages: one Page 1, one Page 2, one Page 3, and three Pages marked "4". The pages are executed by different inventors. The declaration appears to be a composite declaration created from the combination of separately executed declarations. The declaration is not properly executed. It appears that either the attorney pieced together separate complete declarations into one composite declaration or that the inventors were presented with an incomplete declaration. While it is acceptable for applicants to execute separate copies of the declaration, the entire declaration, as executed by the inventor, must be submitted. "Where individual declarations are executed, they must be submitted as individual declaration rather than combined into one declaration." *See MPEP 201.03(II)(B).*¹ The declaration are unacceptable as filed and thus, the requirements of 37 CFR 1.497 (a) and (b) have not been met.

¹ MPEP 201.03 states, in pertinent part, :

An oath or declaration under 37 CFR 1.63 by each actual inventor must be presented. While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity. Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration. For example, where the inventive entity is A and B, a declaration may not be executed only by A naming only A as the inventor and a different declaration may not be executed only by B naming only B as the inventor, which two declarations are then combined into one declaration with a first page of boiler plate, a second page with A's signature, and a second page with B's signature (so that it appears that the declaration was executed with the entire inventive entity appearing in the declaration when it did not).

Since the time limit under the 905 has expired and applicant has not provided a proper reply; that is; a new acceptable oath or declaration executed by and identifying the four inventors and in compliance with 37 CFR 1.497(a) and (b), the application is abandoned.

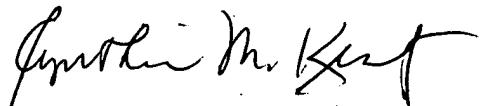
CONCLUSION

The 05 November 2008 Notification of Defective Response is **VACATED**.

The application is **ABANDONED**. The application will be forwarded to the United States Designated/Elected Office for further processing including issuance of Notification of Abandonment (Form PCT/DO/EO/909).

A petition to revive the unintentionally abandoned application under 37 CFR 1.137(b) may be filed with the proper reply. The proper reply is a complete executed oath or declaration, identifying and executed by all four inventors, in compliance with 37 CFR 1.497(a) and (b), to satisfy the requirements of 35 U.S.C. 371 (c)(4) for entrance into the national stage in the United States.

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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